

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Government,

HONORABLE GEORGE CARAM STEEH

v.

No. 15-20652

D-3 EUGENE FISHER,
D-4 COREY BAILEY,
D-6 ROBERT BROWN,
D-10 DEVON PATTERSON,
D-13 ARLANDIS SHY,
D-19 KEITHON PORTER,

Defendants.

JURY TRIAL - MOTION HEARING

Tuesday, June 19, 2018

- - -

APPEARANCES:

For the Government:

JULIE FINOCCHIARO, ESQ.
JUSTIN WECHSLER, ESQ.
MARK BILKOVIC, ESQ.
TARE WIGOD, ESQ.
Assistant U.S. Attorneys

For the Defendants:

HENRY M. SCHARG, ESQ.
On behalf of Eugene Fisher

CRAIG DALY, ESQ.
KEITH SPIELFOGEL, ESQ.
On behalf of Corey Bailey

JAMES FEINBERG, ESQ.
On behalf of Robert Brown

BERTRAM JOHNSON, ESQ.
On behalf of Devon Patterson

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MARK MAGIDSON, ESQ.
JOHN THEIS, ESQ.
On behalf of Arlandis Shy

STEVEN SCHARG, ESQ.
On behalf of Keithon Porter

- - -

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Theodore Levin United States Courthouse
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Detroit, Michigan 48226
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N O N E

Detroit, Michigan

Tuesday, June 19, 2018

At 9:55 a.m.

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(Proceedings held without jury and defendants.)

THE CLERK: Case Number 15-20652, United States of America versus Eugene Fisher, Corey Bailey, Robert Brown, Devon Patterson, Arlandis Shy and Keithon Porter.

THE COURT: Good morning.

MS. FINOCCHIARO: Good morning, your Honor.

THE COURT: Would you please state your appearances?

MS. FINOCCHIARO: Julie Finocchiaro, Justin Wechsler, Mark Bilkovic and Tare Wigod on behalf of the United States.

THE COURT: Okay. Welcome.

MR. H. SCHARG: Henry Scharg on behalf of Eugene Fisher.

THE COURT: Welcome.

MR. JOHNSON: Bertram Johnson on behalf Devon Patterson.

THE COURT: Okay.

15-20652; USA v. EUGENE FISHER, ET AL

1 **MR. DALY:** Craig Daly, one of the lawyers for
2 Corey Bailey. Good morning.

3 **THE COURT:** Good morning.

4 **MR. SPIELFOGEL:** Keith Spielfogel on behalf
5 of Mr. Bailey.

6 **MR. FEINBERG:** James L. Feinberg on behalf of
7 Mr. Brown.

8 **MR. THEIS:** Good morning, your Honor. John
9 Theis on behalf of Arlandis Shy.

10 **MR. MAGIDSON:** Mark Magidson on behalf of
11 Arlandis Shy.

12 **MR. S. SCHARG:** Steven Scharg on behalf of
13 Keithon Porter.

14 **THE COURT:** Welcome. While we've had some
15 distracted this morning, I understand there's been
16 discussions ongoing between government and defense
17 counsel.

18 The Court was also approached by Mr. Daly who
19 expressed reservations about the preliminary jury
20 instructions that will be incorporated in the preliminary
21 instructions given to the jury. The Court is caught a bit
22 short on the issue inasmuch as the Court has previously
23 addressed the question of preliminary instructions. We've
24 had discussions about them. The Court had a -- the
25 government proposed a set of preliminary instruction.

1 Those were forwarded to defense counsel. Mr. Spielfogel
2 copied everyone with his suggestions for change, which
3 amounted to I think three items, and those have been
4 incorporated in the preliminary instructions by the Court,
5 and Mr. Magidson also asked for an incorporation of a
6 different enterprise instruction, which the Court
7 considered and incorporated into the -- in large part, but
8 not verbatim, but in large part incorporated those changes
9 in the preliminary instructions.

10 So the Court just used the request as untimely. I
11 understand the arguments, and I will allow Mr. Daly to
12 make a record when we have some time of his objections to
13 the preliminary instructions, but otherwise, the Court is
14 set, and we've kept the jury sitting now for well over an
15 hour, more like an hour and a half. Not an auspicious
16 start to the trial. That's an understatement.

17 So I will give the instructions which is sought to
18 achieve a balance between the two versions. Defense
19 counsel at early on said they were looking for just the
20 elements without any discussion of the definition of some
21 of the terms. The government felt that the instructions
22 had to incorporate some of the definitional provisions for
23 them to make any sense at all to the jury, and I intend to
24 agree with that position.

25 Again, I thought we had an agreement based upon

1 the back and forth that occurred back on June 11th of this
2 year.

3 I also understand that defendants are being
4 brought over now, and the parties are asking the Court to
5 address plea offers that have been made and apparently
6 rejected, and I'm reluctant to do that before we get into
7 the trial, but I understand that the government's offers
8 were made on the condition that the deals be consummated
9 before the jury is sworn in, and would somebody like to
10 address that?

11 **MR. WATERSTREET:** Ronald Waterstreet
12 appearing on behalf of the United States, your Honor.

13 **MR. FEINBERG:** Should we be doing this
14 without the presence of our clients?

15 **MR. WATERSTREET:** I'm just going to make
16 preliminary statements.

17 **THE COURT:** I was just trying to understand
18 why I have to do this colloquy now, and so I'm -- no, I'm
19 not going to start listening to the conditions of proposed
20 plea agreement without your clients.

21 **MR. WATERSTREET:** I don't plan on going into
22 the details, your Honor.

23 **THE COURT:** Okay. And the defendants are
24 here now. So go ahead.

25 **MR. WATERSTREET:** Your Honor, the government

1 made a series of offers to all of the defendants prior to
2 trial, and I've had a chance to speak to all of the
3 attorneys concerning the offers. For the most part,
4 they've all been rejected. There is one additional
5 offering that is outstanding, and again, it's conditioned
6 prior to the jury being sworn in and opening starting.

7 So I don't know how the Court wishes to proceed on
8 that. We want to make sure the defendants are given the
9 opportunity to consider the government's offer before we
10 start, and I'll leave it up to the Court's discretion, but
11 once the jury is sworn and the opening begins, the offer
12 will no longer be available.

13 **THE COURT:** Okay. And that relates just to
14 Mr. Patterson?

15 **MR. WATERSTREET:** No, your Honor. All of
16 these were -- we were trying to do a global resolution.
17 However, there is one other offer that is still
18 outstanding for one of the defendants, and that's again,
19 prior to the jury being sworn in and opening statements
20 begin.

21 **THE COURT:** So which defendant?

22 **MR. WATERSTREET:** Mr. Bailey.

23 **THE COURT:** Mr. Spielfogel or Mr. Daly?

24 **MR. DALY:** Judge, the latest offer from the
25 government has not been conveyed to our client yet. We

1 don't have a response.

2 The other thing is, would you consider allowing
3 the lawyers to make opening statements first without
4 preliminary instructions, so that you can hear our
5 arguments, like, this afternoon about what our specific
6 position is, and you've outlined it in general terms, but
7 I think there's more to it, and so I'm not -- I don't
8 think the government is opposed to this. We have a
9 general understanding that the government is going to make
10 an opening statement, and we don't anticipate an objection
11 unless they say something outrageous, which we don't
12 expect.

13 So that may be a solution because I don't think
14 you've heard the full argument, and I understand that this
15 has been going on, that both parties have submitted to you
16 different proposals, and in the meantime while this
17 discussion has been going on, there have been a number of
18 other issues that have taken precedence. So this has
19 taken sort of a back seat about the preliminary
20 instructions, and the defense is very concerned that
21 whatever instructions you give initially have to be
22 accurate, and ultimately that's your call, but we have
23 competing positions at this point that I don't believe you
24 fully have heard. You've heard some of it from us in
25 chambers.

1 So that is one way we could proceed. We could
2 start with opening statements after we resolve what Mr.
3 Waterstreet has presented to the individual defendants,
4 and then this afternoon address the preliminary
5 instructions, and then ultimately you can make a decision.
6 That is an alternative that I think would work, and would
7 allow us to resolve the legal issues before we make
8 opening statements.

9 **MR. WECHSLER:** Judge, the government joins in
10 Mr. Daly's position, especially in light one of the items
11 that was added by the Court in response to Mr. Magidson's
12 definition that he wanted added. We do believe that
13 misstates the actual law of RICO conspiracy, and we would
14 like an opportunity to talk about that briefly.

15 Mr. Daly, I agree with everything else he said.

16 **MR. H. SCHARG:** We join in on behalf of
17 Mr. Fisher.

18 **THE COURT:** Well, I guess I could dispense
19 with the -- I think I need to give the preliminary
20 instructions. I could omit all of the instructions
21 relating to the elements and the summary of the charges
22 that are going to be considered by the jury at the
23 conclusion of the case.

24 **MR. DALY:** Judge, we would be comfortable
25 with you giving instructions about general principles,

1 presumption of innocence, burden of proof, leave the
2 charges to later. We will discuss that, and then you can
3 give additional instructions after opening statements.
4 Agreeable?

5 **MR. WECHSLER:** Government agrees.

6 **THE COURT:** Okay. All right. We'll process
7 it that way.

8 I guess we need to -- if these offers are
9 contingent on an agreement prior to the -- prior to
10 swearing in the jury, then I guess we better hear about
11 what the offer is.

12 Mr. Waterstreet?

13 **MR. WATERSTREET:** Yes, your Honor. As to
14 Mr. Fisher, we were offering a 13 year sentence.

15 As to Mr. Patterson, we were offering a sentence
16 of time served based upon the time of sentencing as to --
17 and that would be a global resolution. As to Mr. Fisher,
18 Bailey, Brown, Shy and Porter.

19 Mr. Fisher 13 year, Mr. Bailey 18 years, Mr. Brown
20 18 years, Mr. Shy 18 years, Mr. Porter 18 years.

21 Absent a global resolution of those, we made an
22 offer to Mr. Bailey of 16 years on his own.

23 **THE COURT:** And were those, other than
24 Mr. Bailey, are these 11(c) pleas --

25 **MR. WATERSTREET:** Yes, your Honor.

1 **THE COURT:** -- that the Court would either
2 accept or reject?

3 **MR. WATERSTREET:** Yes, your Honor.

4 **THE COURT:** Not modify?

5 **MR. WATERSTREET:** Correct.

6 **THE COURT:** Anything else that you -- and
7 these pleas offers will be withdrawn when we swear this
8 jury in?

9 **MR. WATERSTREET:** Correct, your Honor.

10 **THE COURT:** Okay. All right. Counsel, have
11 you had chance to discuss these proposals with your
12 clients?

13 **MR. WATERSTREET:** Your Honor, I was just
14 given a sign by Mr. Patterson's attorney, Mr. Bertram
15 Johnson. It seems Mr. Patterson will accept the
16 government's offer. He's signing the documents. We can
17 do that plea perhaps later, as long as there is an
18 assurance on his behalf, because otherwise the defendant
19 will not be making an opening statement.

20 **THE COURT:** All right.

21 **MR. JOHNSON:** That is correct, your Honor.
22 We are executing the plea documents right now.

23 **THE COURT:** All right.

24 **MR. JOHNSON:** And if something were to fall
25 through, we would reserve opening statement, but I don't

1 see that happening.

2 **THE COURT:** So you'll sit through the
3 proceedings this morning and will take the plea this
4 afternoon?

5 **MR. WATERSTREET:** That's fine with me, your
6 Honor.

7 **THE COURT:** Mr. Johnson, is that agreeable
8 with you?

9 **MR. JOHNSON:** That's agreeable.

10 **THE COURT:** All right. Mr. Scharg?

11 **MR. H. SCHARG:** On behalf of Mr. Eugene
12 Fisher, Mr. Waterstreet is correct. There was an offer
13 made of 13 years. Originally there was proposed Rule 11
14 which called for him to plead to attempted murder in
15 furtherance of RICO, which was a maximum of 10 years. The
16 Rule 11 agreement called for a plea to that one count with
17 all other counts dismissed, with the max -- with a max of
18 10 years, which was the ceiling, and it allowed for the
19 defense to argue for a variance at the time of sentencing.
20 That was contingent upon Mr. Fisher not proceeding with
21 his motion to suppress and Franks hearing, with the
22 understanding that the offer would be withdrawn if
23 Mr. Fisher exercised his Constitutional Rights to proceed
24 forward with that motion.

25 When we proceeded for with the motion, the offer

1 was withdrawn, and although there have been tireless
2 efforts on behalf of defense to engage the government and
3 seek a renewal of that proposed Rule 11 plea agreement,
4 that was and consistently rejected by the government.

5 As to the offer of 13 years, although we have not
6 read the art of the deal, if Mr. Fisher rejected the 10
7 years, there's no rational thought process that he
8 would -- that he would agree to more time, and for that
9 reason, we stand by -- and this is Mr. Fisher's decision
10 and his decision alone that -- that he conveyed to me,
11 that he rejects the 13 years that's now offered; that if
12 the original offer, the Rule 11 agreement that was offered
13 previously was put back on the table, with the
14 understanding that there would be no flooring -- I mean,
15 just the minimum, maximum would be 10 years, he would take
16 that Rule 11 agreement at this time. Otherwise, he
17 rejects the new offer.

18 **THE COURT:** Minimum, maximum? I'm sorry --

19 **MR. H. SCHARG:** What happens is --

20 **THE COURT:** If it's a minimum, maximum, both
21 are 10 years --

22 **MR. H. SCHARG:** Flat 10 years. Under the
23 original Rule 11 agreement, the maximum by statute was 10
24 years, but he would be able to argue for less time.

25 **THE COURT:** Okay.

1 **MR. H. SCHARG:** The difference being now is
2 that we conceded that after the suppression motion, that we
3 would take off the table the opportunity to argue for less
4 than 10 years and make it a flat 10 years.

5 **THE COURT:** Right. Okay.

6 **MR. H. SCHARG:** Is that correct, Mr. Fisher?

7 **DEFENDANT FISHER:** Yes, your Honor?

8 **THE COURT:** So you understand that the
9 conditions of the proposal --

10 **DEFENDANT FISHER:** Yes.

11 **THE COURT:** -- for the 13 years?

12 **DEFENDANT FISHER:** Yes, I understand.

13 **THE COURT:** You wish to reject that?

14 **DEFENDANT FISHER:** Yes.

15 **THE COURT:** You've listened to Mr. Scharg,
16 and discussed the pros and cons?

17 **DEFENDANT FISHER:** Yes.

18 **THE COURT:** You understand the exposure that
19 you to a much higher sentence?

20 **DEFENDANT FISHER:** Yes, your Honor.

21 Actually, I don't understand one thing about the
22 enhancement career criminal charge? I don't really
23 understand. Sorry about that. I don't know the
24 circumstances behind that. Like, normally I've seen some
25 people who have talked to me about it that have an

1 extensive record. I don't think that my record was
2 extensive, even though it don't matter what I feel. I
3 didn't get a chance to look at the criteria. I don't
4 understand that.

5 **THE COURT:** Okay.

6 **DEFENDANT FISHER:** I understand the charges.

7 **THE COURT:** You understand -- at least you
8 understand the government would be advocating a guideline
9 range that includes the point that you would receive as a
10 career criminal if that applies, right?

11 **DEFENDANT FISHER:** I'm wondering, do it
12 apply? How do I find out?

13 **THE COURT:** Well --

14 **MR. H. SCHARG:** He has two priors, weapon and
15 drug conviction. With the conviction of a felon in
16 possession, it qualifies for career.

17 **DEFENDANT FISHER:** Attempt CCW.

18 **THE COURT:** Attempt CCW. Just offhand, I
19 don't know. I'm sure Mr. Scharg is familiar, but the
20 point is that your exposure -- potential exposure to the
21 longer sentences is based in part on the government's
22 theory that you would receive career criminal points.

23 Is that correct, Mr. Waterstreet?

24 **MR. WATERSTREET:** Your Honor, as to
25 Mr. Fisher, he is facing -- give me a moment, please.

1 **THE COURT:** If you could come up to the
2 podium so we can hear you.

3 **MR. WATERSTREET:** It is my understanding that
4 Mr. Fisher is facing on Count 1 up to life imprisonment.
5 As to Count 25, he's looking at 10 years imprisonment.
6 Count 26, he's looking at 20 years imprisonment. Count
7 27, he's looking at 10 years imprisonment. Count 32, he's
8 facing five years to life imprisonment. Count 33, he's
9 facing up to 10 years in imprisonment, and count -- did I
10 say 33 -- and Count 35, he's facing up to 10 years
11 imprisonment, and of course, all of these have a fine of
12 \$250,000.

13 Because of his prior convictions, if he meets the
14 criteria of being a career offender, of course, his
15 guidelines will go up proportionally, and so right now I
16 have not done a complete Rule 11 plea agreement. This was
17 based upon actually an offer that was made by the United
18 States as a potential global resolution. We sought a
19 global resolution of all the defendants, and we thought
20 that 13 years would be appropriate as part of a global
21 resolution in this matter as to Mr. Fisher.

22 **THE COURT:** I see.

23 **MR. H. SCHARG:** The guidelines were
24 calculated in the original Rule 11 agreement, and I think
25 the guidelines that were calculated far exceeded the 13

1 years. The low range I believe was 262 months.

2 **MR. WATERSTREET:** I have no reason to quibble
3 with that.

4 **THE COURT:** So Mr. Fisher as it works out,
5 there's been no ruling by the Court that you would receive
6 points as a career offender, and the calculation of the
7 guideline range itself is not any indication of what your
8 sentence would be. The Court has the prerogative of going
9 below that. The offer that's been made is a flat 13 year
10 sentence and --

11 **DEFENDANT FISHER:** Guideline would be 260.

12 **THE COURT:** The guidelines could be
13 considerably higher.

14 **MR. H. SCHARG:** This would be a below
15 guideline sentence, and also I should say, so we have full
16 transparency, when Mr. Fisher rejected 13 years, there was
17 also a counter offer made by the government, a high-low, a
18 ceiling of 15 and a floor of 10 years. So that at the
19 time of sentencing, the government could advocate for 15
20 years, we could advocate for as low as 10 years. That was
21 also rejected by Mr. Fisher after I spoke with him.
22 Again, on the premise that they originally offered him 10,
23 why should he plead to an agreement calling for more than
24 10 years?

25 **THE COURT:** All right. It doesn't

1 necessarily call for more than 10 years if the Court has
2 the prerogative.

3 **MR. H. SCHARG:** Correct. I explained that to
4 him, and said that I couldn't give him any assurances
5 other than the original Rule 11 agreement that called for
6 a max of 10 years.

7 **THE COURT:** All right. So point is it is
8 your decision, and have you been pressured or --

9 **DEFENDANT FISHER:** No, your Honor.

10 **THE COURT:** You want to make the decision to
11 reject the plea?

12 **DEFENDANT FISHER:** Yes, your Honor.

13 **THE COURT:** And that's voluntary on your
14 part.

15 **DEFENDANT FISHER:** Yes, your Honor.

16 **THE COURT:** You believe you have enough
17 information to judge?

18 **DEFENDANT FISHER:** Yes, your Honor.

19 **THE COURT:** Thank you, sir.

20 **MR. H. SCHARG:** Could I say one thing to
21 clarify that? At this time and all times he was willing
22 to plead to the one count?

23 **DEFENDANT FISHER:** Yes, your Honor.

24 **MR. H. SCHARG:** Which carries 10 years, and
25 for that reason in case this matter proceeds to a

1 conviction, there may be an argument for acceptance of
2 responsibility that we may make at a later time regarding
3 that one offense.

4 **THE COURT:** Thanks, Mr. Scharg.

5 Who wants to go next here?

6 **MR. S. SCHARG:** I'll go next, your Honor.
7 Good morning. Steven Scharg on behalf of Mr. Porter.

8 Your Honor, at the last final conference we had,
9 the last final pretrial we had, the government offered my
10 client an agreement of 35 years. At that point my client
11 informed the Court that he was not interested in the plea
12 offer.

13 This morning, as a result of global plea offer
14 that was made by Mr. Waterstreet, it is our understanding
15 that there was a plea offer of 18 years. I had an
16 opportunity to discuss that with Mr. Porter, and at this
17 time he decided not -- he declined that offer and proceed
18 to trial. Is that correct Mr. Porter?

19 **DEFENDANT PORTER:** Yes, sir, I would decline
20 the offer.

21 **THE COURT:** All right. And you understand
22 your potential exposure if you're convicted at trial?

23 **DEFENDANT PORTER:** I understand everything,
24 your Honor.

25 **THE COURT:** And you're making this decision

1 because you feel it is your best interest?

2 **DEFENDANT PORTER:** I know it is in my best
3 interest.

4 **THE COURT:** And nobody has forced or coerce
5 you?

6 **DEFENDANT PORTER:** Not at all, your Honor.

7 **THE COURT:** Okay. Thank you.

8 **MR. S. SCHARG:** Thank you, Judge.

9 **MR. SPIELFOGEL:** As to Corey Bailey, it is
10 our understanding at this point that the offer pursuant to
11 this global attempt is currently now at 16 years.

12 **MR. WATERSTREET:** The global resolution was
13 18, your Honor. What we are recommending for Mr. Bailey
14 and Mr. Bailey alone is not part of the global resolution
15 is 16 years.

16 **MR. SPIELFOGEL:** Fine, not as part of the 16
17 years. We've discussed this with Mr. Bailey. It is your
18 understanding that he is rejecting that offer, and is
19 prepared to proceed to trial.

20 **THE COURT:** Okay. Mr. Bailey, is that
21 correct?

22 **DEFENDANT BAILEY:** That is correct, your
23 Honor. Proceeding to trial.

24 **THE COURT:** Again, you feel this is in your
25 best interest?

1 **DEFENDANT BAILEY:** Absolutely.

2 **THE COURT:** And you understand the offer and
3 the exposure that you would otherwise have?

4 **DEFENDANT BAILEY:** Absolutely.

5 **THE COURT:** And you've listened to your
6 attorneys' advice? Not that you're following it, but
7 you've listened?

8 **DEFENDANT BAILEY:** Yes, I did.

9 **THE COURT:** Okay. Thank you, sir.

10 **MR. MAGIDSON:** Good morning. Mark Magidson
11 on behalf of Mr. Shy.

12 Your Honor, we've previously been presented with
13 an offer of 35 years, which I tendered to my client. He
14 counter -- made a counteroffer that was rejected by the
15 government, and we had no further discussions until this
16 morning when we were presented with the global resolution
17 of 18 years.

18 We then met with Mr. Shy in the lockup. There was
19 a long line. It took a little while, and he discussed it.
20 We discussed the pros and cons. He knows the exposure,
21 but he's advised us that he wishes to proceed to trial
22 knowing the consequences.

23 **THE COURT:** All right. Mr. Shy, you
24 understand what's been said?

25 **DEFENDANT SHY:** Yes, your Honor.

1 **THE COURT:** And you are in agreement?

2 **DEFENDANT SHY:** Yes.

3 **THE COURT:** And you wish to reject the offer?

4 **DEFENDANT SHY:** Yes.

5 **THE COURT:** And have your trial?

6 **DEFENDANT SHY:** Yes.

7 **THE COURT:** Nobody has forced you?

8 **DEFENDANT SHY:** No.

9 **THE COURT:** Thank you. Mr. Feinberg?

10 **MR. FEINBERG:** Good morning, your Honor. Jim
11 Feinberg attorney for Mr. Brown.

12 The original plea offer in this case was 10 years.
13 Mr. Brown rejected that, and when I say 10 years,
14 mandatory, minimum of 10. As of this morning, the
15 government indicated that the plea would be to 18 years
16 rather than 10 years. They would not reinstate the 10.

17 I spoke to Mr. Brown. Mr. Brown does not wish to
18 afford himself to the plea offer of 18 years,
19 understanding all of the consequences that he's facing.

20 **THE COURT:** Mr. Brown you understand what's
21 been said?

22 **DEFENDANT BROWN:** Yes, your Honor.

23 **THE COURT:** You agree with what's been said?

24 **DEFENDANT BROWN:** Very much.

25 **THE COURT:** You believe this is in your best

1 interest to reject plea agreement?

2 **DEFENDANT BROWN:** I'm agreeing with my
3 lawyer, no plea now.

4 **THE COURT:** All right. Thank you, sir.

5 **DEFENDANT BROWN:** Thank you.

6 **MR. WATERSTREET:** Your Honor, I apologize for
7 any delay there may have been caused, but I was approached
8 by defense counsel, asked for a global resolution. I sat
9 down with the attorneys in my office. We went over a
10 potential global resolution, and I made an offer based
11 upon their request for a global resolution, and for any
12 time that has been taken away from the jury, I apologize.

13 **THE COURT:** Thank you, Mr. Waterstreet.
14 Okay.

15 **MR. WATERSTREET:** One last thing, what time
16 does the Court wish me to be back for Mr. Patterson's
17 plea?

18 **THE COURT:** 2:00.

19 **MR. WATERSTREET:** I'll be here at 2:00.

20 **THE CLERK:** 2:30 might be better.

21 **MR. WATERSTREET:** Thank you, your Honor.

22 **THE COURT:** All right. If there's nothing
23 else, we'll bring the jurors in.

24
25 (Proceedings with jury at 10:28 a.m.)

1 **THE COURT:** You can take a seat. Thanks.

2 Okay. We have great apologies to make here. This
3 is not a very auspicious start to the trial, but
4 unfortunately we had a number of issues that could not be
5 deferred past the point where we swear you in as jurors,
6 and so we needed to get it right, and I think we've done
7 that now, and I tend to pride myself on getting cases
8 heard efficiently and without inconveniencing you, without
9 consuming more of your time than necessary.

10 So again, hopefully, I'll redeem my standing with
11 you by end of the trial based on minimizing the time that
12 you have to sit around, and I know the quarters back
13 there. We are in a borrowed courtroom. My regular
14 courtroom is up on two, and it's much more comfortable in
15 the jury room than this. So that's another reason to
16 minimize time that you are sitting around, and so I'm
17 sorry, and I'll do my best to avoid inconveniencing you at
18 every turn of the case.

19 So if you would all rise? You need to be sworn to
20 act as a jury. All stand, and raise your right hand.

21

22 (Jury sworn in by deputy clerk.)

23

24 **THE COURT:** Thanks, folks.

25 So I'm going to be giving you your preliminary

1 instructions which will govern your participation in the
2 trial.

3 Now that you have been sworn, you are advised it's
4 going to be your duty to find from the evidence in the
5 case what the facts of the case are. You and you alone
6 will be judges of the facts. You then have to apply to
7 those facts the law as the Court will give it to you. You
8 must follow the law whether you agree with it or not.

9 Nothing that the Court may say or do during the
10 course of the trial is intended to indicate or should it
11 be taken by you as indicating what your verdict should be.

12 The evidence from which you will find the facts
13 consist of the testimony of witnesses, documents, and
14 other things received into the record as exhibits, and any
15 facts that the lawyers agree to or stipulate to or what
16 the Court may instruct to you find.

17 Certain things are not evidence and must not be
18 considered by you as such. I'm going list some of the
19 things for you now.

20 Statements, arguments and questions by the lawyers
21 are not evidence.

22 Objections to questions are not evidence. Lawyers
23 have a obligation to their clients to make objections when
24 they believe that the evidence being offered is improper
25 under the rules of evidence. You should not be influenced

1 by an objection or by the Court's ruling on the
2 objections. If the objection is sustained, you should
3 ignore the question. If overruled, you should treat the
4 answer just like any other. If you're instructed that
5 some item of evidence is received for a limited purpose
6 only, you should follow that instruction.

7 Testimony that the Court has excluded or told you
8 to disregard is not evidence, and must not be considered.

9 Anything that you may have seen or heard outside
10 of the courtroom is also not evidence and should
11 disregarded.

12 You are to decide the case solely on the evidence
13 presented here in the courtroom.

14 There are two kinds of evidence, direct and
15 circumstantial evidence.

16 Direct evidence is direct proof of facts, like the
17 testimony of an eye witness. Circumstantial evidence is
18 proof of facts from which you may infer or conclude that
19 other facts exist. I'll give you some further
20 instructions on these, and as well as other matters at the
21 end of the case, and may give you some instructions as the
22 case moves along.

23 It will up to you to decide which witnesses to
24 believe and what witnesses not to believe, and how much of
25 any person's testimony to accept or reject. I'll give you

1 some guidelines for determining the credibility of
2 witnesses at the end of the case.

3 As you know, this is a criminal case, and there
4 are three basic rules about a criminal that you should
5 keep in mind.

6 First, a defendant is presumed innocent until
7 proven guilty. The indictment brought by the government
8 against a defendant is only an accusation and nothing
9 more. It's not proof of guilt or anything else. The
10 defendant and each defendant therefore starts out with a
11 clean slate.

12 Second, the burden of proof is on the government
13 until the very end of the case. The defendant has no
14 burden to prove his innocence or to present any evidence,
15 or to testify. Since the defendant has the right to
16 remain silent, the law prohibits you from arriving at your
17 verdict by considering that a defendant may not have
18 testified.

19 Third, the government must prove the defendant's
20 guilt beyond a reasonable doubt. I will give you further
21 instructions on this point later, but bear in mind in this
22 respect, a criminal case is different from a civil case.

23 In this case the defendants are charged with a
24 number of offenses which are going to be addressed, of
25 course, by the parties and the Court during the course of

1 that proceeding.

2 I'll be giving you instructions to assist you in
3 controlling your deliberations and your decision in the
4 case, and those instructions will include a summary of the
5 elements of the offenses that the government must prove to
6 make its case.

7 I do want to again give you a few words about your
8 conduct as jurors. I know heard them before, but they are
9 very important, and I will repeat them again.

10 As jurors, you're to decide this case based solely
11 on the evidence presented here within four walls of this
12 courtroom. This means that during the trial, you must not
13 conduct any independent research about the case, the
14 matters in the case or the individuals or corporations
15 involved in the case.

16 In other words, you should not as a consult
17 dictionaries, search the internet, websites or blogs or
18 use any electronic tools to obtain information about the
19 case or to help you decide it. Please don't try to find
20 out information from any source outside the confines of
21 the courtroom.

22 Until you deliberate, you should not discuss the
23 case with anyone, including your fellow jurors. After you
24 retire to deliberate, you may then to begin discussing the
25 case with your fellow jurors, but you can't discuss the

1 case with anyone else until you return a verdict and the
2 case is at an end.

3 Many of you use cell phones, Blackberries,
4 internet and other tools of technology. You should not
5 talk to anyone at any time about the case, and this
6 includes your family and friends. Thus, you should not
7 attempt to communicate electronically with anyone,
8 including those folks, and you may not communicate with
9 anyone about case on the cell phone, through email,
10 Blackberry, text message, Twitter or any blog or website,
11 including Facebook, Google, MySpace, LinkedIn or YouTube.
12 You may not use any similar technology of social media,
13 even if I have not specifically mentioned it here.

14 I expect you will inform me if you become aware of
15 any juror's violations of these instructions, and a juror
16 who violates these restrictions, of course, jeopardizes
17 the fairness of the proceedings, and a mistrial could
18 result, which would require us to start the trial process
19 over again.

20 Finally, don't form any opinions until all of the
21 evidence is in. Keep an open mind until your start your
22 deliberations at end of the case.

23 I think this case will prove to be interesting and
24 noteworthy for you, and I hope you share that opinion.

25 If you do want to take notes during the course of

1 the trial, you may do so. However, it is difficult
2 sometimes to take notes and pay attention to what the
3 witnesses are saying at the same time. So if you do take
4 notes, be sure your note taking does not interfere with
5 your listening to and considering all the evidence.

6 Also, if you do take notes, do not discuss them
7 with anyone before you begin your deliberations. Don't
8 take your notes with you at the end of the day. Be sure
9 to leave them in the jury room, and then you will resume
10 your possession of the notes when the trial resumes.

11 I do expect you to listen carefully to all of the
12 evidence, even if you're not taking notes. Remember that
13 it is your own responsibility to listen carefully to the
14 evidence, and you can't give that responsibility over to
15 someone who is taking notes. We depend on the judgment of
16 all the members of the jury, and you must all remember the
17 evidence as much as possible as presented during the
18 course of the trial.

19 The trial is now going to begin. The government
20 will first make an opening statement, which is simply an
21 outline to help you understand the evidence as it comes
22 in.

23 Next, the defendants' attorney may make an opening
24 statement, but does not have to make an opening statement.
25 Opening statements are not evidence, and they are not

1 arguments in the case.

2 The government will then present its witnesses,
3 and the attorneys for the defendants may cross examine
4 them.

5 Following the government's case, the defendants
6 may, if they wish, individually present witnesses whom the
7 government may cross examine.

8 After all the evidence is in, the attorneys will
9 present their closing arguments to summarize and interpret
10 the evidence for you, and government will then instruct --
11 and the Court will then instruct you on the law. After
12 that, you'll retire deliberate on your verdict.

13 We have an IT issue. We'll send you back to the
14 jury room.

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16 (Recess taken at 10:42 a.m.)

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C E R T I F I C A T I O N

I, Ronald A. DiBartolomeo, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.

s/Ronald A. DiBartolomeo
Ronald A. DiBartolomeo, CSR
Official Court Reporter

May 9, 2019
Date

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